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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,216	10/19/2000	Shigehisa Watanabe	3542-0111P	4485

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EXAMINER

CHIANG, JACK

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 09/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/692216

Applicant(s)

S. Watanabe

Examiner

J. Chiang

Group Art Unit

2642

#6

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7-3-03.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 6, 4-5 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 6, 4-5 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

CLAIMS

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 6, 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Konomi (US 4588867).

Regarding claim 6, Konomi shows:

An electronic instrument case (2, 4, 5) in which various electronic instruments (such as 3, 9 etc.) are mounted;

A sound producing device (see 6, 9, 15);

An opening (area for mounting 6c);

A housing (6, 15);

Electroacoustic transducer parts (9);

A sound discharging nozzle (6c) projecting from the housing (6, 15);

The sound discharging nozzle (6c) being inserted in the opening (see mounting of 6c) formed of the case (2, 4-5).

Regarding claims 4-5, Konomi shows:

The first case comprises an upper and lower case (see 2, 4, 5), a recess (for 15), the opening (2c); and

A cylindrical cushion (7).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6, 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Konomi (US 4588867).

Regarding claim 6, Kobayashi shows:

An electronic instrument case (13) in which various electronic instruments (i.e. phone features) are mounted;

A sound producing device (fig. 6);

An opening (16);

A housing (12);

Electroacoustic transducer parts (col. 1, lines 8-12);

A sound discharging nozzle (19) projecting from the housing (12).

Kobayashi differs from the claimed invention in that the sound discharging nozzle is facing against, but not inserted in the opening.

However, Konomi teaches providing a sound discharging nozzle (i.e. 6c) which is inserted in the opening (2c) of the case.

Hence, it would have been obvious for one skilled in the art to modify Kobayashi by providing the nozzle in the opening as taught by Konomi, this simply can be considered as an variation of Kobayashi because the basic concept of providing the nozzle and its sound delivering function is substantially unchanged whether the nozzle is in the opening or faced against the opening.

Regarding claims 4-5, the combination of Kobayashi and Konomi shows:

The first case comprises an upper and lower case (see 13 in Kobayashi), a recess (for 12), the opening (16); and

A cylindrical cushion (7 in Konomi).

ARGUMENT

5. In response to the remarks, on pages 7-8, applicant argues that Konomi's first case (2, 4, 5) indicated by the examiner is not a first case in which electronic instrument is mounted. The examiner disagrees. First, what is the "electronic instrument" applicant wants to referring to? Second, are Konomi's piezoelectric element 3 and speaker 9 considered as "electronic instrument"?

Applicant further argues that Konomi's second case (6, 15) is not a case but pipe and damper. The examiner disagrees. Let's assume applicant is correct that case (6,

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15) is not a case, then let's remove this case (6, 15), now how do you want to mount element (9)?

Applicant further argues that the pipe (6c) designated by the examiner as a nozzle does not project from a case. Hence, the pipe (6c) is not inserted in the opening of an instrument case. The examiner disagrees. If the pipe (6c) is not inserted in the opening of the case (2, 4, 5), then why is this pipe (6c) is projecting from the opening of the case (2, 4, 5)?

On top of page 9, applicant states that the ear microphone of Konomi corresponds to the sound producing device (10) of the present invention.... The examiner believes that the applicant's statement is incomplete, Konomi does not just disclose an ear microphone, Konomi involves the mounting of a microphone and a speaker in the ear piece.

On page 9, about the combination of Kobayashi and Konomi, applicant continues argues about Konimo's pipe (6c). These issues have been discussed above, see comments above.

In conclusion, the claimed limitations are met by Konomi and the combination of Kobayashi and Konomi.

6. Applicant's arguments with respect to claims 6, 4-5 have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.


Jack Chiang
Primary Examiner
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